

COMMISSION DECISION

of 23.9.1992

finding that the remission of import duties in a particular case is justified

(request submitted by France)

REM: 4/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 1 April 1992, received by the Commission on 3 April 1992, France requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.

2 OJ No L 286, 9.10.198, p.1.

3 OJ No L 352, 13.12.1986, p. 19.

In January 1989 a French company imported from Canada a product known as Duralum Crude which was declared under heading 28.18.10.00.000.0J and a duty of 5.2% was paid.

At the time of customs clearance a sample was taken for analysis by the customs laboratory. As a result of the analysis the product was classified under heading 26.06.00.00.0G, which is exempt from duty. Because of this new classification the customs authorities repaid the duty incorrectly levied.

On the strength of the administration's position the company declared subsequent consignments of this product under heading 26.06.00.000.

In August 1989 the customs administration analysed the product again and concluded that it should be classified under heading 28.18.10.00.000, subject to a duty of 5.2% - the heading under which the product was initially declared when it was first imported in January 1989.

In view of this new classification, the customs administration claimed recovery of the duty not levied for all consignments imported between January and August 1989.

In March 1990 the company applied for waiver of post-clearance recovery of the duty under Article 5(1) of Regulation (EEC)1679/79 (information binding on the authorities). In November 1990, this application was refused by the French administration on the grounds that Article 5(1) of the above Regulation was not applicable.

In December 1991 the company presented a new application on the basis of Article 13(1) of Regulation (EEC) No 1430/79.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 3 June 1992 within the framework of the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations, other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the error committed by the company was not the result of misinterpretation of customs legislation but reflected a decision by the customs administration based on an analysis carried out by the customs laboratory;

Whereas such a decision could not legitimately be considered correct and and the customs laboratory's classification error could not reasonably have been detected by the company;

Whereas the company can be taken to have acted in good faith because the position of the customs authorities, based on an analysis of the samples by one of its laboratories, was supposed to provide the person liable with legal certainty;

Whereas within the meaning of Article 13(1) of Regulation (EEC) No 1430/79 a special situation exists;

Whereas no deception or obvious negligence can be attributed to the company;

Whereas it is therefore justified in this case to grant the remission of import duties requested,

HAS ADOPTED THIS DECISION :

Article 1

The remission of import duties of FF [REDACTED] requested by France on 1 April 1992 is hereby found to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 23.9.1992

For the Commission